IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Revision No. 453 of 2001
(Old No. 1301 of 1986)

Bir Singh S/o Sr Indra Singh
R/o Swarg Ashram
Laxman Jhoola
District Pauri Garhwal …Applicant

Versus

1. State of U.P.
2. Bharat Sadhu Samaj Adhyamik
Yoga Ashram Swarg Ashram through
Its alleged Manager
Nitya Nandji Saraswat
Swarg Ashram
P.S. Laxman Jhoola
District Pauri Garhwal …. Opposite Parties

Sri Lokendra Dobhal learned counsel for the revisionist
Learned A.G.A. for opposite party.

Hon'ble B.C. Kandpal, J.

This criminal revision has been filed by the revisionist-Bir Singh against the judgment and order dated 29.05.1986 passed by the learned Sessions Judge Pauri Garhwal dismissing the Criminal Appeal No. 10 of 1986 and modifying the judgment and order dated 25.02.1986 passed by the learned C.J.M. Pauri Garhwal in complaint case No. 12 of 1985 Bharat Sadhu Samaj Vs. Bir Singh under Section 448 I.P.C. P.S. Laxman Jhoola, District Pauri Garhwal.

Brief facts of the case are that a complaint was filed by Bharat Sadhu Samaj through its Manager fro initiating the action against the revisionist under Section 441,442 and 448 I.P.C. with the allegations that the complainant was a religious institution and its building comprised of a number of rooms to be occupied from time to time by person visiting the place for

meditation. The revisionist/accused Bir Singh occupied room No. 20 in the building unlawfully and when he was asked to vacate the room, he abused the office bearers and did not vacate the room. Hence the complaint was lodged.

On the basis of the statement recorded under Section 200 Cr.P.C. and the document produced by the complainant, the learned Magistrate summon the accused/revisionist fro an offence under Section 441, 442 and 448 I.P.C.

The learned C.J.M., Pauri Garhwal after assessing the entire evidence was pleased to convict the accused/revisionist Bir Singh under section 448 I.P.C. and sentenced him one month imprisonment and fine of Rs. 1000/- and in default of payment of fine 15 days further imprisonment vide judgment and order dated 25.02.1986.

Feeling aggrieved against the judgment and order passed by the court below, the accused preferred an appeal before the court of learned Sessions Judge, Pauri Garhwal but the same was also dismissed vide judgment and order dated 29.05.1986. The appellate court i.e. learned Sessions Judge maintained the conviction under Section 448 I.P.C. but amended the sentence of punishment by awarding a fine of Rs. 1500/- only. The learned appellate court also passed an order that in default of payment of Rs. 1500/-, the accused will have to suffer an imprisonment of 1 ½ month.

Feeling aggrieved by the aforesaid judgment and order passed by the appellate court, the accused Bir Singh preferred the revision before the High Court of Allahabad which has been transferred to this Court after creation of Uttaranchal State, for disposal.

Heard Sri Lokendra Dobhal learned counsel for the revisionist, learned A.G.A. and perused the record.

The record shows that the revisionist had admittedly occupied the room no. 20 of the complainant's institution and deposited Rs. 50/- as security amount. The revisionist was allowed to occupy that room for a period of year ending 30.11.1980. The appellant also admittedly signed a printed declaration form on 15.09.1980 for not claiming any right with regard to the room given to him as a tenant or as a licencee.

As per the prosecution case, the revisionist did not vacate the room even after the expiry of the period. There is no evidence to show that the revisionist occupied the room on monthly rent and continued to occupy the same on payment of rent. It also appears from the record that the complainant filed a suit in the court of Judge Small Causes (Civil Judge) Pauri Garhwal in the year 1980 and that suit was decided with the direction that the plaint be returned to the plaintiff for presentation to the competent court for jurisdiction. There was no adjudication of the point that the revisionist had a tenancy right with regard to room/land in question.

Record also shows that it is a clear case of house trespass within the meaning of Section 448 I.P.C. It is not a case of bonafide claim of right to occupy the premises. The revisionist occupied the room in the capacity of an ordinary pilgrim but afterward continued to occupy the same unlawfully.

On the basis of the assessment of evidence on record, I come to the conclusion that the judgment and order passed by both the courts below do not suffer wt any illegality, impropriety or error of jurisdiction.

I find myself in total agreement with the view adopted by the courts below. I do not find any ground for interference in the judgment and orders passed by the courts below.

Accordingly, the revision is dismissed. The judgment and order passed by the appellate court in confirmed.

The stay order dated 05.08.1986 stands vacated.

The record of the court below shall be returned immediately and learned C.J.M. is directed to take steps for recovery of fine imposed against the revisionist by the lower appellate court.

(B.C. Kandpal, J.)

July 22, 2004
ASWAL